IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 605 of 1996

with

CRIMINAL APPEAL No 990 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DADBHAI DEHABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 605 of 1996
MR NITIN M AMIN for appellants
MR MA BUKHARI APP for Respondent No. 1

2. Criminal AppealNo 990 of 1996
MR MA BUKHARI APP for appellant
MR NITIN M AMIN for Respondents

CORAM : MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

Date of decision: 17/02/99

COMMON ORAL JUDGEMENT (Per A.M. Kapadia, J.)

1. Criminal Appeal No. 605 of 1996 is filed by appellants herein - original accused who have been convicted for the offences under Sections 147, 148 - 304 Part II read with Section 149 of the Indian Penal Code ('IPC' for short hereinafter) for murdering Dharsinh Kuvrabhai and they all were sentenced to suffer simple imprisonment for six months for the offence under Section 147 of IPC, simple imprisonment for one year for the offence under Section 148 of the IPC and R.I. for 5 years for the offence under Section 304 Part II read with Section 149 of the IPC. They, therefore, challenged their conviction and also sentence.

1.1. Criminal Appeal No. 990 of 1996 is filed by the State of Gujarat challenging the same judgment and order for not recording conviction of the accused under Section 302 of the IPC.

1.2. As both these appeals arise out of a common judgment dated 9.8.1996 passed by learned Additional Sessions Judge, Ahmedabad Rural, in Sessions Case No. 10 of 1994, they are heard together and dispose of by this common judgment.

2. Prosecution case against the appellants in Criminal Appeal No. 605 of 1996/ original accused (hereinafter they are referred to as 'the accused' for the sake of convenience and brevity) was that they all had formed an unlawful assembly, the common object of which was to murder Dharsinh Kuvrabhai, and in furtherance of that object, they armed with weapons, intercepted him while he was on the way to his field with two 'sathi' (a ploughing apparatus propelled by bullocks), and assaulted him and murdered him.

2.1. It was alleged that Dharsinh was the owner of agricultural land which he had mortgaged with accused No.1 in consideration of Rs.2,000/- and as per the agreement, on return of Rs.2,000/- by Dharsinh to accused No.1, the mortgage was to be redeemed. As per the prosecution case, four days prior to the alleged incident, Dharsinh went to accused No.1 with Rs.2,000/to redeem the mortgage of his field but accused No.1 told him that it was not to be redeemed and asked him for out-right sell the said field to him. Thereafter Dharsinh came back home and because of this incident enmity erupted between them. As a result of this enmity, on the day of incident, when Dharsinh alongwith P.W.1,

Budhabhai Polabhai was going with two sathis to cultivate his field, at the outskirts of the village, at about 7.30 A.M., all the accused came there in a tempo and intercepted him. After alighting from the tempo, accused Nos.1 and 2 inflicted several blows to him with iron-shod stick. As a result of this assault, fell down. Thereafter accused No.3 also inflicted blow on his head with blunt portion of 'Farsi' (a battle-axe). Accused No.4 was the driver of the tempo and was having a stick with him and accused No.5 was having a dharia with him. On hearing shout, P.W.3, Parbatbhai Dharsinhbhai, who was coming with water pot and P.W.2, Gordhanbhai Hamirbhai both came there and at their intervention, injured Dharsinh was saved from further beating by the accused. All the accused thereafter fled away. The injured was removed to Ranpur Hospital where he was declared dead.

2.2. The aforesaid incident was reported to Ranpur Police Station by P.W.1, Budhabhai Polabhai. His written complaint was recorded there and in pursuance thereof offence was registered and police investigation was commenced. During police investigation, inquest report of the dead body of Dharsinh was prepared and thereafter dead body was sent for autopsy, panchnama of the scene of offence was prepared, statements of the witnesses were recorded, accused were arrested, weapons used for the commission of the crime were recovered, clothes which were put on by the accused were also recovered and the weapons and clothes were sent to Forensic Science Laboratory for chemical analysis and report. At the conclusion of the investigation, accused were found have committed offence of murder of Dharsinh. Therefore, all of them were charge-sheeted before the learned Magistrate.

2.3. On committal, learned Additional Sessions Judge framed charge against all the accused for the commission of the aforesaid offences which was read over and explained to them to which they pleaded not guilty and claimed to be tried and, therefore, they all were put on trial in Sessions Case No. 10 of 1994.

2.4. In order to bring home the charge levelled against the accused, prosecution mainly placed reliance on oral testimony of 3 ocular witnesses, including complainant Budhabhai, who, according to prosecution, was very much present at the scene of the incident and saw the incident.

2.5. To prove homicidal death of Dharsinh, prosecution has examined Dr. Narendrabhai Nakum, who performed

autopsy and also placed reliance on the panchnama which were prepared during the course of investigation.

2.6. Learned trial Judge, on appreciation and evaluation of the evidence, recorded the following findings:

(i) homicidal death of Dharsinh was proved;
(ii) there was motive for accused to commit crime as deceased mortgaged his field to accused No.1 and when deceased wanted to redeem the mortgage, accused No.1 refused to do so and insisted him for outright sale to him and because of that there was enmity between them and to fulfil that motive, on the fateful day, all five accused persons formed an unlawful assembly and came with weapons in tempo which was driven by accused No.4 and intercepted the deceased while he was on the way to his field and inflicted injuries to him. Therefore, it is proved that they all were members of unlawful assembly and in furtherance of their common object they assaulted Dharsinh and murdered him.

2.7. After examining various case law, learned trial Judge came to the conclusion that the said act of the accused is not murder but an act of culpable homicide not amounting to murder punishable under Part II of section 304 of IPC and accordingly he recorded conviction under Sections 147, 148, 304 Part II read with Section 149 of IPC and sentenced them, as aforesaid.

3. Mr. Nitin Amin, learned advocate appearing for the accused, while taking us through the entire testimonial collections, contended that all the eye witnesses examined by the prosecution are close relatives of deceased and their presence at the scene of occurrence in the early morning hours at 7.30 A.M. was very much doubtful. Therefore, according to him, no reliance could have been placed on their oral testimony. He further contended that their evidence is not consistent with the evidence of P.W.6, Dr. Narendrabhai Nakum, who performed autopsy and whose evidence was recorded at Ex.37, as according to them, accused Nos.1, 2 and 3 inflicted several blows on the head of the deceased while according to Dr. Narendrabhai he noticed only one injury on the head of deceased. Therefore, in view of the above contradictory version of ocular witnesses and medical evidence, it has become impossible to come to the definite conclusion as to whose evidence inspires confidence.

4. He then next contended that there is no evidence with respect to the forming of unlawful assembly. If prosecution case is accepted in its entirety then also no role was attributed to accused Nos.4 and 5. Though, according to prosecution, they were armed with weapons, they have not inflicted any blow to the deceased. Therefore, they were simply onlookers and or by-standers and mere presence at the scene of occurrence ipso facto cannot lead to the conclusion that they were members of the assembly and that too unlawful assembly. Lastly he submitted that in view of the medical evidence, accused Nos.1, 2 and 3 can never be held guilty for commission of the offence of murder. According to him, at the most they may be held guilty for their individual act by way of minimum liability for causing grievous hurt to deceased which is punishable under Section 324 of the IPC and, therefore, he urged that the judgment and order recording of conviction against all the accused requires interference of this Court by acquitting all of them and alternatively at the most, accused Nos.1 to 3 may be held guilty for their individual act under the principles of minimum liability for causing grievous hurt to the deceased punishable under Section 324 of IPC.

5. In counter submission, Mr. M.A. Bukhari, learned A.P.P. for State, who has filed Criminal Appeal No. 990 of 1996 challenging the acquittal of the accused of the offence punishable under Section 302 of IPC, contended that the learned trial Judge has committed grave error in convicting all the accused under Section 304 Part II of IPC though there is ample evidence that all the accused formed an unlawful assembly and in furtherance of their common object and to fulfil their motive so also to take revenge against deceased who has refused to sell the field which was mortgaged with accused No.1, they all assembled with weapons and formed an unlawful assembly and intercepted the deceased while he was on the way to his field and by inflicting several injuries with iron-shod sticks and with blunt portion of farsi and committed his murder. In this regard, he has placed heavy reliance on the oral testimony of three eye witnesses including the complainant. According to him, the appeal filed by the State deserves to be allowed by holding the accused guilty for the offence under Section 302 of IPC for murdering Dharsinh instead of 304 Part II of IPC and they may be sentenced accordingly.

6. In view of the rival contentions, now let us examine the actual evidence on record.

7. So far as homicidal death of Dharsinh is concerned, it would not detain us even for a moment in coming to the conclusion that deceased died a homicidal death and even defence has also not disputed this aspect. However, for the purpose of our satisfaction, we have perused the evidence of P.W.6, Dr. Narendrabhai Tapubhai Nakum, whose oral evidence was recorded at Ex.37. He was the medical officer of Ranpur Public Health Centre who performed autopsy on the dead body of victim on 6.7.1993 at about 11 A.M. During autopsy he recorded the following external injuries in autopsy report at Ex.38:

(i) Contusion over left parietal region 8 inch x 4 inches size oblique vertically.

(ii) Depressed fracture skull on left parietal region.

He has noticed the following internal injuries:

(i) Clotted blood present underneath scalp over left parietal region.

(ii) Depressed fracture of skull over left parietal region upto middle of skull.

(iii) Left parietal lobe injured by depressed fracture skull.

(iv) Bleeding from left parietal lobe present (haemorrhage).

According to him, the cause of death was due to intracranial haemorrhage as a result of head injury.

8. Now, in view of the aforesaid oral evidence of Dr. Narendrabhai Nakum, at Ex.37 and autopsy report at Ex.38, it is duly proved that deceased died homicidal death.

9. Now, after having held that deceased died a homicidal death, the next questions fall for our consideration are:

(i) whether the accused were the authors of the injuries to the deceased?

(ii) whether the accused were members of unlawful assembly?

(iii) which of the accused caused fatal injuries to the

deceased?

(iv) whether the said act of the accused can be said to be murder punishable under Section 302 of IPC or whether it is culpable homicide not amounting to murder punishable under section 304 of IPC or an offence of causing grievous injuries to the deceased punishable under Section 324 of IPC?

10. In order to answer the aforesaid questions, let us examine the testimony of ocular witnesses. Firstly we may advert to the evidence of P.W.1, Budhabhai Polabhai, whose evidence was recorded at Ex.24. This witness happened to be the nephew of the deceased. In his oral testimony he has testified that he knew that deceased Dharsinh had mortgaged field with accused No.1 in consideration of Rs.2,000/- and as per terms and conditions on repayment of the said amount, accused No.1 was to redeem the mortgage. Four or five days prior to the incident, deceased went to accused No.1 alongwith Hamirbhai Kuvarbhai and Mulubhai Dahyabhai for repayment of Rs.2,000/- Accused No.1 refused to redeem the mortgage and asked Dharsinh to sell the field permanently. As accused No.1 refused to accept the money the deceased came back. He further testified that the incident has taken place on 6.7.1993 at 7.30 A.M. On the day of the incident, he and Parbat, both in company of deceased were going to the field with sathi and when they reached in the outskirts of village, they were intercepted by the accused by stopping tempo in which they came in front of them and all of them alighted from it. Accused Nos.1 and 2 inflicted several blows on the head of the deceased with iron-shod sticks. As Dharsinh fell down, accused No.3 inflicted blow with the blunt portion of farsi on the head of Dharsinh. He has further testified that accused No.4 was having a stick and accused No.5 was having a dharia. He has further testified that he, Gordhanbhai Hamirbhai and Parbatbhai intervened and saved Dharsinh from further beating. Thereafter all the accused persons fled away in the tempo. After that the injured was shifted to hospital and during treatment he succumbed to the injuries and declared dead and, therefore, he lodged the complaint which is on record at Ex.39. It may be appreciated that during the course of cross-examination of this witness, certain contradictions were brought on record but they were of very minor nature and not even worth to make a mention about them. This witness successfully withstood the test of cross-examination.

11. Now adverting to the evidence of P.W.2

Gordhanbhai Hamirbhai, Ex.25, he has stated similar version as stated by {P.W.1, Budhabhai Polabhai. In nut-shell he has stated that accused Nos.1 and 2 inflicted injuries on the head of deceased Dharsinh with ironshod sticks and after the injured fell down accused No.3 inflicted blow with the blunt portion of farsi on the deceased. He has also stated that accused Nos.4 and 5 have not played any role though they were present there with weapons and on account of their intervention they saved the injured from further beating. During cross examination it was suggested that he has not witnessed the incident and he went to the scene of the incident after he heard the shouts, this witness repelled the said suggestion put forward by defence with regard to his not witnessing the incident. This witness also withstood the test of cross-examination.

12. Lastly P.W.3, Parbatbhai Dharsinhbhai was examined at Ex.26. He has also inter alia testified similar version which is testified by P.W.1 and P.W. 2. At the cost of repetition, we may say that he has testified that accused Nos.1 and 2 inflicted blows on the head of deceased with iron-shod stick and after he fell down, accused No.3 also inflicted blow with the blunt portion of farsi. During cross-examination several suggestions were made to this witness about non-witnessing the incident but he also repelled all these suggestions and withstood the test of cross-examination.

13. Now, on overall appreciation of the aforesaid evidence, it can be made out that that accused Nos.1 and 2 and accused No.3 have definitely inflicted injuries on the head of the deceased with stick and farsi. It has also come in evidence that accused Nos.4 and 5 both were present there armed with weapons but they have not played any role and, therefore, they have not contributed anything to the injuries caused to the deceased. In short, they were not authors of the injuries received by the deceased as accused Nos.1, 2 and 3 were the authors of the injuries received by he deceased.

14. Now, the next question which we have to answer is whether all the accused formed unlawful assembly in furtherance of their common object with a view to fulfil their motive by murdering the deceased.

15. Learned advocate Mr. Nitin Amin contended that in view of the aforesaid oral evidence, if we accept the same in its entirety, in that case also accused Nos.4 and 5 have not played any role in commission of the crime as

they merely accompanied accused Nos.1, 2 and 3 in the tempo and hence they cannot be called members of unlawful assembly as there is no positive and direct evidence that there was common object and there was unlawful assembly and before recording the conviction under Section 149 of IPC, the essential ingredient of section 141 of IPC must be established. Section 149 creates specific offence and deals with punishment for that offence. In support of the aforesaid contentions, he placed reliance on the decision of the Honourable Supreme court in the case of Bhudeo Mandal v. State of Bhiar reported in AIR 1981 SC 1219. In the said judgment, the Honourable Supreme Court has observed as under:

> "Where the Court convicts any person or persons of an offence with the aid of Section 149, a clear finding regarding the common object of the assembly must be given and the evidence discussed must show not only the nature of the common object but also that the object was unlawful."

16. Mr. Amin has also referred to the judgment of the Honourable Supreme Court in the case of Baladin v. State of UP, AIR 1956 SC 181. In the said judgment the Honourable Supreme Court had an occasion to decided how and under what circumstances offence under Section 149 can be proved and what was the type and nature of the evidence required to establish the offence. It was observed by the Honourable Supreme Court as under:

> "It is well settled that mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under section 142, Indian Penal Code."

It was further observed by the Honourable Supreme Court as under:

> "If members of the family of the appellants and other residents of village assembled, all such persons could not be condemned 'ipso facto' as being members of that unlawful assembly. It is necessary, therefore, for the prosecution to led evidence pointing to the conclusion that all the appellants had done or been committing some overt act in prosecution of the common object of the unlawful assembly."

Lastly it was observed:

> "The omnibus evidence in general terms to the effect that all these persons and many more were the miscreants and were armed with deadly weapons, like guns, spears, pharses, axes, lathis, etc. naturally has to be very closely scrutinised in order to eliminate all chances of false or mistaken implication."

17. In this connection, we may also make reference to the recent decision of the Honourable Apex Court in the cases of Mahantappa v. State of Karnataka AIR 1999 SC 314. In the said judgment also the Honourable Supreme Court has observed that when there is no evidence as to what role was played by a particular accused and when there is no evidence establish that the remaining accused persons are members of unlawful assembly and their presence at the scene of offence as onlookers cannot be relevant.

18. After having considered the proposition laid down by the Honourable Supreme Court in the aforesaid three decisions and in light of our above discussion, we are of the opinion that accused Nos.4 and 5 were merely present at the scene of offence though armed with weapons, ipso facto cannot lead to the conclusion that they were members of unlawful assembly. Accused No.4 was the driver of the tempo and was having a stick with him while accused No.5 was having a deadly weapon, dharia with him. But the prosecution has not been able to establish what is the relations of accused Nos.4 and 5 with rest of the accused. The prosecution has not alleged against both of that they have inflicted any injury to the deceased. According to us, if they both were members of assembly and that too unlawful assembly, then they would have also taken part in beating the deceased. On the contrary, there is no evidence about their even gesturing incitement or abetment. In that circumstances, possibility cannot be ruled out that while accused No.4 was driving his tempo, all the accused persons might have been on their way to their field and as all of them were hailing from agricultural class family and normally agriculturists always keep some weapons with them, possibility also cannot be ruled out that the accused No.4 while going to his field might have met all the accused and this may be a coincidence. Therefore, it cannot be inferred that accused Nos.4 and 5 was having knowledge right from the very beginning that accused Nos.1, 2 and 3 are going to beat deceased. In view of the aforesaid state of affairs of the evidence and the

law laid down by the Honourable Supreme Court, accused Nos.4 and 5 were not members of unlawful assembly and prosecution has failed to establish charge against them.

19. In view of the aforesaid evidence, accused Nos.4 and 5 can not be held guilty for offences for which they were charged and resultantly they cannot be convicted and sentenced as imposed by the learned trial Judge.

18. We have held that accused Nos.1 to 3 were the authors of the injuries to Dharsinh and because of the injuries inflicted by them he succumbed to the same during the course of treatment. Learned advocate Mr. Amin has also contended that there is no evidence that which of the injuries caused by which accused was proved to be fatal. It has come in the evidence that accused Nos.1 and 2 inflicted injuries with iron-shod sticks while accused No.3 inflicted injury with blunt portion of farsi and, therefore, there was no intention on their part to cause death of Dharsinh. While taking us again through the evidence of Dr. Narendrabhai he tried to persuade us that as per evidence of Dr. Narendrabhai there was only one injury found on the head of the deceased which was proved fatal while according to the eye witnesses there were several blows given by the accused Nos.1 to 3. In view of the variance of the evidence of ocular witness and medical evidence accused deserves benefit of it as there is no trustworthy evidence with respect to which injury was caused by which accused and which injury was proved to be fatal.

21. In support of his aforesaid contention he invited our attention to the judgment of the Honourable Supreme Court in the case of Ram Lal v. Delhi administration, AIR 1972 SC 2462. In the said judgment, the Honourable Supreme Court has observed that where the evidence clearly discloses that two lathi blows had been given on the head and there is no evidence which of those two was given by the accused, the benefit of doubt must go to him.

22. He has also pressed into service the judgment of this Court in the case of Lalubha K. Garasia v. State of Gujarat 1997 (2) GLH 327. In the said judgment this Court observed as under:

"Indian Penal Code, 1860 - S. 302, r.w. S. 34
Murder - Eight accused assaulted prosecution witnesses with weapons like dharia, stick, sword, etc. - One of the injured died and another received serious injuries - Death due to breaking

of 8th rib left which caused damage to spleen and lever - No specific role is assigned to any of the accused - It is not established as to how 8th rib was broken - It might be because of the blow by stick which one of the accused was having - In absence of definite evidence about the blow given by any of the accused has resulted into the death, accused cannot be convicted for the offence of murder."

23. Lastly he referred to the judgment of this Court in the case of Koli Gator Sura v. State, reported in 7 G.L.R. 357, wherein this Court held as under:

"Once the Court comes to the conclusion that all the accused did not share any common intention to cause death, the individual liability with regard to the individual act would arise. When it is not possible to find out, as to which of the two blows was fatal, in absence of any common intention shared by the appellant-accused with any other person, he can only be saddled with the liability on the principle of attributing to him the minimum intention or knowledge for the act committed by him.

Held that, in the instant case, the liability that may be arising of the accused for his act would be one for an offence of voluntarily causing hurt, with any hard blunt substance like a stick. But a stick becomes a dangerous weapon, by reason of its iron-shod at its top, and when that part of a stick is used as a weapon of offence, it is likely to cause death, and the offence committed with such instrument would fall not under sec.302 or sec.304 Part II but under Sec.324 I.P.Code."

24. After having given anxious consideration to the aforesaid case law of the Honourable Supreme Court as well as of this Court coupled with minute examination of the oral testimony of the eye witnesses and the evidence of the doctor concerned who performed autopsy on the dead-body of the deceased. We are of the opinion that it is duly proved that accused Nos.1 and 2 inflicted blows with sticks while accused No.3 inflicted blow with blunt portion of farsi. It is a coincidence that all the blows fell on one part only. Therefore, it cannot be said that they have not played any role. On the contrary, on having perusal of the post mortem notes, there were four injuries. Therefore, judgment relied upon by Mr. Amin,

learned advocate for the appellants is of no avail or assistance to them.

25. Now we have to consider the minimum liability of accused Nos.1 to 3. There is positive evidence that all the accused Nos.1 to 3 have inflicted injuries on the vital part of the deceased, i.e., head. There was a motive behind it. Once we come to the conclusion that all the accused had shared common intention to cause death of the deceased, independent liability with regard to the individual act would arise and when it is not possible to find out as to which of the blow given by which accused was found fatal or which of the accused has given fatal blow in absence of any common intention on the part of the accused with any other person he can only be saddled with liability on the principle of attributing to him the minimum intention or knowledge for the act committed by him.

26. The evidence of prosecution unequivocally suggests that there was no intention on the part of the accused to cause death of deceased and, therefore, they have inflicted injuries with stick and blunt portions of farsi. If they were intended to kill Dharsinh then accused No.3 would not have used the blunt portion of farsi but would have used the sharp portion of it. Therefore, we are of the opinion that the crime committed by accused Nos.1 to 3 was not an act of murder but culpable homicide not amounting to murder and this aspect has been more aptly and succinctly described by the learned trial Judge in paragraph 30 of his judgment and we are in full agreement with the learned trial Judge on this score. Therefore, the learned trial Judge has very rightly recorded conviction under section 304 Part II of IPC and sentenced accordingly.

27. Learned trial Judge has imposed simple imprisonment for six months for the offence under Section 147 of IPC, simple imprisonment for one year for commission of offence under Section 148 of IPC and R.I. for five years for commission of offence under Section 304 Part II read with Section 149 of IPC. As we have come to the conclusion that section 149 cannot be invoked when there was no unlawful assembly, they can be convicted under Section 304 part II read with section 34 of IPC.

28. Learned advocate Mr. Amin at this stage urges that all the accused Nos.1 to 3 are undergoing sentence and they have already undergone sentence of 2 years and 7 months and considering the permissible remission under

various scheme in view of the celebration of golden jubilee year of independence, they may be released within a short time and, therefore, by showing mercy if this Court impose the sentence which is already undergone by them as substantive sentence, it would meet the ends of justice.

29. Learned A.P.P. Mr. Bukhari contended that it is true that the accused Nos.1 to 3 have already undergone sentence of 2 1/2 years and they may be released within a short time. In that case if some reasonable amount of compensation is awarded to the widow of the deceased Dharsinh and on that condition if this Court holds that the sentence already undergone by the accused Nos.1 to 3 is substantive sentence, the ends of justice would be met.

30. We have given considerations to the submissions of both the learned advocates and also considered the aspect of victimology. It is true that the learned trial Judge has imposed sentence of R.I. for 5 years and that the accused Nos.1 to 3 have already undergone sentence of more than 2 1/2 years and accused Nos.1 to 3 might be released within a short time by getting remission because of celebration of golden jubilee year of independent. Hence, we are of the opinion that the ends of justice would be met if the accused Nos.1 to 3 are ordered to pay in all Rs.51,000/- (Rupees fifty one thousand only) i.e., Rs.17,000/- (Rupees seventeen thousand only) each. In that case, period of R.I. already undergone by them can be teated as substantive sentence.

31. In the result, Criminal Appeal No.605 of 1996 filed by appellants/accused is allowed so far as appellant Nos.4 and 5 are concerned. Conviction and sentence recorded against appellant Nos.4 and 5 is quashed an set aside and they are acquitted of the charge framed against them. Appellants Nos.4 and 5 are hereby discharged from their bail bonds. As they were released on bail pending the appeal they need not surrender. So far as conviction and sentence against accused Nos.1, 2 and 3 is concerned, it is confirmed and maintained. However, the sentence imposed on them to suffer R.I. for 5 years is altered and it is ordered that the sentence already undergone by them shall be treated as substantive sentence provided they deposit an amount of Rs.51,000/(Rupees fifty one thousand only) i.e., Rs.17,000/- (Rupees seventeen thousand only) each as compensation, in the lower Court within a period of four weeks hereof. In case of failure to deposit the amount of Rs.51,000/- (Rupees fifty one thousand only) as

aforesaid he substantive sentence imposed by the lower Court is confirmed. if the amount, as aforesaid is deposited, the lower Court is directed to pay the said amount to the widow of the victim-deceased, as compensation, on due verification. Only on depositing Rs.17,000/- (Rupees seventeen thousand only) each, appellants/accused Nos.1 to 3 shall be released forthwith if their presence is not required in connection with any other case.

28. Criminal Appeal No. 990 of 1996 filed by the State is dismissed.

(karan)